

ORDINANCE NO. 3300

AN ORDINANCE AMENDING CHAPTER 4, ARTICLE 6 OF THE CITY CODE OF THE CITY OF ABILENE, KANSAS, BY AMENDING SECTIONS 4-603 THROUGH 4-606; RENUMBERING SECTIONS 4-607 THROUGH 4-610; AMENDING AND RENUMBERING SECTION 4-611; AND ADOPTING NEW SECTIONS 4-612 AND 4-613, ALL CONCERNING WEED NUISANCES, AND REPEALING THE EXISTING SECTIONS 4-603 THROUGH 4-611.

BE IT ORDAINED, BY THE GOVERNING BODY OF THE CITY OF ABILENE, KANSAS:

SECTION ONE. Section 4-603 of the City Code of the City of Abilene, Kansas is hereby amended to read as follows:

4-603. NOTICE TO REMOVE.

Whenever the City Health Officer determines there has been a violation of this article or has grounds to believe that a violation has occurred, a one-time yearly written notice of violation and order of abatement ("notice and order") shall be given to the owner, occupant or agent of the subject premises.

SECTION TWO. Section 4-604 of the City Code of the City of Abilene, Kansas is hereby amended to read as follows:

4-604. ORDER OF ABATEMENT.

The one time yearly notice and order shall provide information sufficient to reasonably allow the recipient to determine the nature of the actions required to self-abate the violation by cutting or destroying weeds or overgrowth within ten (10) days.

SECTION THREE. Section 4-605 of the City Code of the City of Abilene, Kansas is hereby amended to read as follows:

4-605. REQUEST FOR HEARING.

The recipient of the notice and order may request a hearing before the Building Standards Board appeal by completing and filing a written request for hearing form in the office of the city clerk prior to the close of business on the date of the deadline for self-abatement of the violation as stated in the notice and order. The hearing shall be conducted under the same procedure as set forth in Section 4-310. The decision of the building standards board shall be the final order of the City.

SECTION FOUR. Section 4-606 of the City Code of the City of Abilene, Kansas is hereby amended to read as follows:

Sec. 4-606. FORM.

The notice and order shall:

1. Include a description of the subject premises or exterior property sufficient for identification;
2. Include a statement of the nature of the violation, including relevant ordinances, with sufficient information that would reasonably allow the recipient to determine the nature of the violation and to allow for self-abatement.
3. Include an order of abatement allowing a reasonable time to take the actions required to self-abate the violation;
4. Inform the recipient of the notice and order of the right to a hearing if the recipient prepares and files a written request for a hearing form in the office of the city clerk prior to the close of business on the date of the deadline for self-abatement of the violation;
5. Inform the recipient that failure to comply with the notice and order may result in the City abating the violation and recovering any costs not paid by the recipient within 30 days of a notice of costs by (a) assessing of any costs against the subject real estate or (b) filing suit seeking a personal judgment against the recipient;
6. Inform the recipient that the violation is subject to prosecution; and
7. Inform the recipient that no further notices and orders will be given in the same calendar year to remove weeds or plant growth.

SECTION FIVE. The City Code of the City of Abilene, Kansas is hereby amended by adding a section to be numbered 4-607 (in place of existing Section 4-607 as it is renumbered Section 4-609 pursuant to Section 7 of this ordinance below), which section reads as follows:

4-607. SERVICE OF NOTICE AND ORDER.

The notice and order shall be served either by certified mail, return receipt requested, or by personal service; provided, however, if the subject premises or exterior property is unoccupied and the owner is a non-resident, then by mailing the order by certified mail, return receipt requested to the last known address of the owner. In cases where the owner is unknown or is a nonresident, and there is no resident agent, notice shall also be posted by the city clerk on the official city web site.

SECTION SIX. The City Code of the City of Abilene, Kansas is hereby amended by adding a section to be numbered 4-608 (in place of existing Section 4-608 as it is renumbered Section 4-610 pursuant to Section 8 of this ordinance below), which section reads as follows:

4-608. ABATEMENT BY CITY; ASSESSMENT AND COLLECTION OF COSTS.

- (a) If the recipient of the notice and order fails to comply with the order either (1) within the period of time designated in the order or in the published notice (if applicable); (2) in the event of any subsequent violation within the same year, without further notice, then the City may go onto the property to abate the violation in a reasonable manner. The City shall not be responsible for damage to property due to reasonable methods of gaining entrance onto the property or for damages to property in the reasonable exercise of its duty to the public to abate the violation(s). The City may use its own employees or contract for services to abate the violation.

- (b) If the City takes action to abate the violation, it shall provide a notice of costs to the person responsible for the violation. The notice of costs shall be delivered by certified mail, return receipt requested, at the last known mailing address; or if the property is vacant or unoccupied, the notice of costs shall also be posted on the property in a reasonable manner. The recipient shall have 30 days from the date of the notice of costs to make full payment. The notice of costs shall state:
- (1) The description of the subject premises or exterior property sufficient for identification;
 - (2) The nature of the work performed to abate the violation;
 - (3) The costs incurred for the abatement of the violations in either a lump sum or in itemized form;
 - (4) That the notice is a demand for payment within 30 days from the date of notice;
 - (5) That failure to pay the entire amount within 30 days shall allow the City to file a tax lien against the property or to pursue personal judgment for the recovery of the costs, or both;
 - (6) That such additional remedies to recover costs shall include additional amounts including additional administrative costs, attorneys' fees when applicable, and interest; and
 - (7) The payments shall be made by check or money order made payable to the City of Abilene, Kansas, with no post-dating of the check, and sent to the address as stated within the notice with a written indication of the purpose for the payment and the address of the property where the violations occurred. Partial payments will not be accepted and shall be considered as non-payments, unless a payment arrangement has been agreed to and approved in writing by the code official.
- (c) If the payment of costs is not made within the 30-day period, the City may levy a special assessment for such costs against the subject real estate (or the real estate abutting the right-of-way from which the violation was abated). The City Clerk at the time of certifying other city taxes to the county clerk shall certify such costs, and the county clerk shall extend the such cost on the tax roll of the county against the subject real estate, and it shall be collected by the county treasurer and paid to the City as other city taxes are collected and paid. Provided further, the City may collect the costs in the manner provided at K.S.A. 12-1,115, as amended, by bringing an action in the district court as a personal debt. The City may pursue both assessment and collection at the same time until the full cost, including applicable interests, court costs, attorneys' fees, and administrative costs, including but not limited to, investigative cost as well as the cost of providing notice, including any postage, have been paid in full.
- (d) The abatement of a violation of this chapter by the City shall not be a defense or excuse to any person in violation of this article.

SECTION SEVEN. Existing Section 4-607 of the City Code of the City of Abilene, Kansas is renumbered 4-609, to read as follows:

4-609 RIGHT OF ENTRY.

The public officer, and authorized assistants, employees, contracting agents or other representatives are hereby expressly authorized to enter upon private property at all reasonable hours for the purpose of cutting, destroying and/or removing such weeds in a manner not inconsistent with the city weed control law.

SECTION EIGHT. Existing Section 4-608 of the City Code of the City of Abilene, Kansas is renumbered 4-610, to read as follows:

4-610 UNLAWFUL INTERFERENCE. It shall be unlawful for any person to interfere with or to attempt to prevent the public officer or authorized representatives from entering upon any such lot or piece of ground or from proceeding with such cutting and destruction. Such interference shall constitute a violation of the city weed control law.

SECTION NINE. Existing Section 4-609 of the City Code of the City of Abilene, Kansas is renumbered 4-611, to read as follows:

4-611 NOXIOUS WEEDS. Nothing in the city weed control law shall affect or impair the rights of the city under the provisions of Chapter 2, Article 13 of the Kansas Statutes Annotated, relating to the control and eradication of certain noxious weeds.

SECTION TEN. Existing Section 4-610 of the City Code of the City of Abilene, Kansas is renumbered 4-612, to read as follows:

4-612 DEFINITION OF NOXIOUS WEEDS. For the purpose of this article, the term *noxious weeds* shall mean kudzu (*Pueraria lobata*), field bindweed (*Convolvulus arvensis*), Russian knapweed (*Centaurea picris*), hoary cress (*Lepidium draba*), Canada thistle (*Cirsium arvense*), quackgrass (*Agropyron repens*), leafy spurge (*Euphorbia esula*), burragweed (*Franseria tomentosa* and *discolor*), pignut (*Hoffmannseggia densiflora*), musk (*nodding*) thistle (*Carduus nutans L.*), and Johnson grass (*Sorghum halepense*).

SECTION ELEVEN. Existing Section 4-611 of the City Code of the City of Abilene, Kansas is renumbered 4-613 and amended to read as follows:

4-613 FAILURE TO COMPLY; PENALTY.

(a). In addition to or as an alternative to the remedy of abatement as provided under this article, any person in violation of this article may be prosecuted in municipal court and subject to:

1. a fine of not less than \$50 nor more than \$500;
2. a sentence of not more than six (6) months in jail;
3. such other orders as the court deems just and consistent with the purpose and intent of this article; or

4. any combination thereof.
- (b). Prosecution of any offender under this article does not limit the city's right to pursue assessment or collection of costs as stated in this article, or by other laws.
 - (c). Each day that any violation shall continue shall constitute a separate offense.
 - (d). Any fines assessed under this article shall be collected by the municipal court administration and paid over to the general fund, except for assessments of court costs.

SECTION ELEVEN. Repealer. Existing Sections 4-603, 4-604, 4-605, 4-606, 4-607, 4-608, 4-609, 4-610, and 4-611 of the City Code of the City of Abilene, Kansas are hereby repealed.

SECTION TWELVE. Effective Date. This Ordinance shall become effective and in full force from and after its passage, adoption and publication by summary in the official City newspaper.

PASSED AND APPROVED by the Governing Body of the City of Abilene, Kansas this 9th day of May, 2016.



CITY OF ABILENE, KANSAS

By: _____

S. Dee Marshall
S. Dee Marshall, Mayor

Penny Soukup, CMC
Penny Soukup, CMC
City Clerk

APPROVED AS TO FORM:

Aaron O. Martin

Aaron O. Martin, City Attorney